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Branch Banking and Trust Company
7 *successor in interest to FDIC as receiver*
8 *of Colonial Bank N.A.*

9 **UNITED STATES BANKRUPTCY COURT**
10 **DISTRICT OF NEVADA**

11 In re:) CASE NO.: 11-14973-mkn
12 R & S ST. ROSE LENDERS, LLC) CHAPTER 11
13 Debtor.)
14)
15) Date: October 5, 2011
16) Time: 9:30 a.m.
17)

18 **BRANCH BANKING AND TRUST COMPANY'S REPLY TO LIMITED OPPOSITION**
19 **TO MOTION TO MODIFY AUTOMATIC STAY TO ALLOW STATE COURT**
20 **APPEAL TO PROCEED**

21 Creditor, Branch Banking and Trust Company, by and through counsel HUTCHISON &
22 STEFFEN, LLC, replies to the Debtor's limited opposition to the request to modify the
23 automatic stay to allow appellate proceedings to continue in that certain appeal in the Nevada
24 Supreme Court, styled "R&S St. Rose Lenders v. Branch Banking and Trust Company", appeal
25 number 56640. This reply is based upon the attached points and authorities, and any oral

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1 argument permitted by the Court.

2 Dated: September 28, 2011.

3 HUTCHISON & STEFFEN, LLC

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11 **POINTS AND AUTHORITIES**

12 **A. This Court's Order should not indicate that attorney fees are approved**

13 The Debtor has requested to have language in the order stating that attorney fees should
14 be paid from the estate. Compensation of attorneys is still be governed by Section 330 of the
15 Bankruptcy Code and there should be no indication in the modification of stay order that
16 attorney fees are approved and to be paid by the estate. Application for fees still needs to be
17 made and the right to oppose and consider the reasonableness of the fees needs to be provided.

18 Further, any counsel that provides representation to the Debtor in the appellate
19 proceedings should be approved by the Court pursuant to Sections 327, 330, 1107 of the Code
20 and should be limited the representation of the Debtor and no other parties to the appeal.

21 **B. The Debtor's request for other provisions in the Order should not enlarge**
22 **any rights provided by law.**

23 The Debtor's other provisions that it requests to be in the order need to indicate that the
24 Debtor's rights are not enlarged beyond those rights given by applicable law. Thus, if applicable
25 law gives the Debtor certain rights, then those rights are preserved. BB&T opposes any
26 suggestion by the Debtor that would result in rights granted to the Debtor in addition to those
27 rights given by applicable law.

CONCLUSION

Based upon BB&T's motion and Debtor's limited opposition, this Court should modify the automatic stay in both the Rose and Lenders bankruptcies to allow BB&T to proceed with its appeal of the State Court judgment. After completion of the appeal, the parties can report back to the Court to determine what further proceedings, if any, are necessary in State Court or this Court.

Dated: September 28, 2011.

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